IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1858 OF 1998.

1. M/s.The Standard Batteries Ltd.,
   a public limited company registered
   under Companies Act, 1956 and having
   their registered office at Vakola,
   Santacruz, Mumbai 400 055.

2. M/s.United India Insurance Co.Ltd.,
   a body corporate, subsidiary of the
   General Insurance Corporation of
   India having their registered and
   head office at 24, While Road,
   Madras 600 014, and one of their
   Mumbai Divisional Office No.8 at
   Union Co-operative Insurance Building
   Sir P.M.Road, Fort, Mumbai 400 001. ... Plaintiffs.

Versus.

M/s.Shree Chawneswar Road Lines,
carrying on their business as common
carriers and having their office at
Wadi Bunder Good Depot, C.Rly,Shed,
No.12, Mumbai 400 010. ... Defendant.

Shri V.S.Amin i/by M/s.V.S,Amin & Co. for the Plaintiffs.

None for the Defendant.

CORAM : ABHAY S.OKA, J.

DATED : 31st July, 2007.

ORAL JUDGMENT.:

1. The suit is listd on Board under the caption of "Undefended Suits for Exparte Decree". The learned Counsel appearing for the Plaintiff has tendered on record an affidavit in lieu of examination-in-chief of Shri Atul Ashok Mirlekar, the Administrative Officer of the 2nd Plaintiff. The said affidavit is marked "X" for identification and is taken on record. Six original

documents are also produced along with the list. The original documents along with the list are marked "Y" (collectively) and are taken on record.

2. According to the case of the Plaintiffs the 1st Plaintiff hired services of the Defendants on 10th August 1995 and entrusted to their charge two consignments of 295 fully charged batteries Type 65F 88MM and two packets of G/Cards for carriage consideration and safe delivery by road ex-Mumbai to Nashik. The consignments were valued at Rs.1,98,558/- and Rs.2,05,405/- respectively as per the invoices dated 14th August 1995. The Defendant accepted the said consignments and booked under their consignment notes Nos.8474 and 8476 dated 10th August 1995 for carriage from Mumbai to Nashik.

3. According to the case of the Plaintiffs at the agreed road destination, the Defendant delivered 83 batteries in damaged condition. According to the case of the Plaintiffs, the Defendant admitted the said damage in their letter dated 4th October 1995.

4. According to the Plaintiffs, the said consignment was duly insured with the 2nd Plaintiffs. The 2ns Plaintiffs at the instance of the 1st Plaintiff appointed an independent surveyor to assess the cause

and extent of the loss. The said surveyor submitted a report dated 20th October 1995. The 1st Plaintiffs by letter dated 28th September 1995 had lodged a monetary claim upon the Defendants for the said loss caused to the said consignments. By notice dated 23rd December 1997, the Defendants were called upon to pay the sum of Rs.90,602/- being the loss suffered by the Plaintiffs. The 2nd Plaintiff paid the said amount to the 1st Plaintiffs as per the policy of insurance and thereafter on 24th January 1997 the 1st Plaintiff executed in favour of the 2nd Plaintiff a letter of subrogation as well as a special power of attorney authorising the 2nd Plaintiffs to recover the said amount from the Defendants. As the amount was not paid by the Defendants, the present suit has been filed for recovery of the amount along with interest thereon at the rate of 18% per annum.

5. The original consignment notes dated 10th August 1995 issued by the Defendants are placed on record and are proved by the evidence of Shri Atul Ashok Mirlekar. The letter dated 4th October 1995 sent by the Defendant to the 1st Plaintiff is also duly proved. In the said letter the Defendant contended that the alleged damage to the consignment could have been caused in the normal course of transit due to failure of the material to withstand in the jerks and other normal hazardous

motions involved in a long road journey. It was alleged that the goods are transported at the owners risk. The survey report dated 20th October 1995 submitted by M/s.P.B.Desai, the Surveyor appointed by the 2nd Plaintiffs has been also produced and proved. The said survey report records that the invoice cost of 83 batteries was Rs.1,14,472/- and the salvage value of the said batteries was Rs.24,900/-. The claim of the Plaintiffs has been duly proved by the affidavit in lieu of evidence of Shri Atul Ashok Mirlekar. The original documents are also proved.

6. The Plaintiffs have claimed interest at the rate of 18% per annum. Considering the facts and circumstances, the interest will have to be granted at the rate of 9% per annum from the date of institution of the suit till realisation.

7. Hence the suit is decreed in terms of prayer clauses (a) and (b) of the plaint. However, the interest payable will be at the rate of 9% per annum from the date of institution of the suit till realisation or payment.

8. The Plaintiffs will be entitled to refund of Court fees, if any, as per the Rules.

9. Certified copy is expedited.

Judge.